

REMARKS

Claims 9-20 are pending in the application. Applicants hereby cancel claims 10, 12, 14, 16, 18 and 20. In response to the Examiner's comments concerning priority, Applicants have amended the priority statement first presented in the Preliminary Amendment filed on November 3, 2003, to recite the current status of all non-provisional applications to which a claim of priority was made. It is noted that the filing receipt mailed by the U.S.P.T.O. on March 17, 2004 acknowledges Applicants' claims to priority, including all foreign priorities claimed.

Claim Objections

Claim 11 is objected to because for failing to include a period at the end of the claim. Applicants have amended the claim to correct this informality.

Claim Rejections – 35 U.S.C. §112

Claims 9-20 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner asserts that recitation of a "substantially homogenous immunogenic Jeryl-Lynn isolate..." in Claims 9, 11 and 13 is relative terminology rendering the claims indefinite. Applicants have amended the claims using language deemed appropriate by the United States Patent and Trademark Office in USSN 10/213,965, now U.S Pat. No. 6,656,476, the parent to the instant application. Claim 9 as amended recites that the vaccine comprising the substantially homogeneous Jeryl-Lynn isolate contains no more than 10% of a different Jeryl-Lynn isolate. Literal support for this amendment may be found in the instant specification at page 2, lines 22-25. There can be no doubt about the clarity and definiteness of the claims in view of the instant amendments. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §112, second paragraph rejection.

Double Patenting

Claims 9-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-13 of U.S. Patent No. 6,656,476 B2

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and claims 1-20 of U.S. Patent No. 6,024,962. Applicants herewith provide a timely terminal disclaimer that overcomes this rejection.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the subject application is in condition for allowance. If the Examiner has any remaining objections or concerns, the Examiner is respectfully requested to contact Applicants' undersigned attorney to resolve such issues and advance the case to issue.

Respectfully submitted,


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